Filed 3/6/09 Marriage of Baldwin CA4/1

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

| | |
|---|---|
| In re the Marriage of PATRICIA and JEFFREY BLAKE BALDWIN. | |
| PATRICIA BALDWIN,<br><br>Appellant,<br><br>v.<br><br>JEFFREY BLAKE BALDWIN,<br><br>Appellant. | D052028<br><br>(Super. Ct. No. DN45133) |

APPEAL from a judgment of the Superior Court of San Diego County, William S. Dato, Judge. Affirmed.

Patricia Baldwin appeals from a "judgment on determination of child support arrearages," contending the trial court, in calculating child support payments that Jeffrey Baldwin[1] owed her, improperly relied on (1) an inference relating to Jeffrey's past

1 We refer to the parties by their first names to avoid confusion, and do not mean any disrespect.

payments, and (2) a defense of laches. Jeffrey contends in a cross appeal that the trial court erred in denying his motion for reconsideration. We affirm.

## FACTUAL AND PROCEDURAL SUMMARY

Jeffrey Baldwin and Patricia Baldwin married in 1984, and had two children together. They separated in 1987, and Patricia was granted sole physical custody of the children. Jeffrey was ordered to pay $500 monthly in child support.

In September, 2005, Patricia filed an order to show cause and sought an accounting to determine child support arrears. Her declaration alleged Jeffrey owed her at least $151,569.00. By contrast, Jeffrey's declaration stated he "faithfully sent child support payments to [Patricia] since 1991." Jeffrey recognized he did not have receipts for some payments, but noted that the children had stayed with him part of the time, and, he bought them clothes and gifts. He requested that the court conclude he owed zero arrears.

The trial court's May 9, 2007 tentative decision found that Jeffrey owed $34,615.00 plus interest. Both parties filed objections to the tentative decision.

The trial court's July 23, 2007, statement of decision addressed the parties' objections and clarified that the court had calculated arrears based on the parties' stipulation regarding the payments Jeffrey was able to document. Jeffrey's counsel subsequently objected to the stipulation, but the court was not persuaded to void it. The court stated, "In any event, [Patricia's] counsel graciously agreed to credit [Jeffrey] with most of the additional payments that were mistakenly left off the accounting chart he prepared. Those corrected figures have been used in the court's decision."

The court divided into four periods Jeffrey's child support obligations, and calculated Jeffrey's compliance for each period as follows: First, from September 1987 to September 1990, "[Jeffrey] makes no serious argument that he paid child support during this period." Second, the court referred to the period from September 1990 through November 1996 as "the most troubling," explaining "[Patricia] testified in her deposition that [Jeffrey] 'rarely' made child support payments. She said he 'paid me probably 13 months in 19 years.' But by her own admission as reflected in her written submissions, [Jeffrey] made at least 19 monthly payments between September 1994 and November 1996 alone." The court concluded, "The bottom line is that [Patricia] is simply not credible when she asserts that she received little if any child support" during that period. The court noted, "[Patricia's] lack of credibility does not mean that [Jeffrey] has met his burden of establishing he made all of his child support payments during the 1990-96 period. [He] is responsible for documenting his payments, and even during more recent years he has been unable to show consistent payment of his support obligation." Third, from November 1996 through September 1998, Jeffrey's then employer paid child support directly by means of a wage assignment. Fourth, the court found that from September 1998 through May 2003, "[Jeffrey] demonstrated he paid approximately 90 percent of the amount he owed for that period."

The court computed Jeffrey's total arrears at $25,475.00 plus interest. It calculated Jeffrey's arrears for 1990 to 1996 thusly: he "paid 90 percent of his obligation between 1998 and 2003 without the benefit of a wage assignment, it is a reasonable inference that he made a similar percentage of his payments during the earlier 1990-96 period."

On October 17, 2007, judgment was entered and the notice of entry was mailed to the parties. Jeffrey was ordered to pay $69,137.00 in arrears.

On November 8, 2007, Jeffrey filed a motion to reconsider and submitted "additional documents pertaining to child support paid."

On November 14, 2007, Jeffrey filed a cross appeal.

On December 7, 2007, following a hearing, the trial court denied the motion to reconsider, finding it untimely and indicating, "[Jeffrey] did not make a showing that could have been presented earlier [*sic*]."

On December 7, 2007, Patricia appealed.

On December 17, 2007, Jeffrey filed a motion to "re-reconsider court decision on December 7, 2007," based on excusable neglect. (Code of Civ. Proc.,[2] § 473, subd. (b).)

DISCUSSION

I

Patricia contends that under Evidence Code section 600, the trial court erred in drawing an inference that because Jeffrey paid 90 percent of child support between 1998 and 2003, he likely paid the same percentage between 1990 and 1996. Patricia claims the court completely ignored Jeffrey's own September 2005 declaration regarding the amount he paid from 1991 to 1996. Moreover, she claims, "The court could have as easily inferred that [Jeffrey] paid the subsequent 1998 through 2003 time period without wage

---

2 All further statutory references are to the Code of Civil Procedure unless otherwise stated.

assignment simply because he learned his lesson when the wage assignment was in place."

"An inference is a deduction of fact that may logically and reasonably be drawn from another fact or group of facts found or otherwise established in the action." (Evid. Code, § 600, subdivision (b).) "The duty of an appellate court is not to seek out and analyze conflicts or to substitute its own appraisal for that of the trial court in the absence of an obvious abuse of discretion. When two or more inferences can be reasonably deduced from the facts, a reviewing court is without power to substitute its deductions for those of the trial court. In the absence of prejudicial error of law or violence to reason, it is the duty of an appellate court to uphold the trial court." (*De Angeles v. Roos Bros., Inc*. (1966) 244 Cal.App.2d 434, 438.)

Here, we conclude that the trial court did not err in drawing the inference it did. The trial court found that Patricia was not credible regarding Jeffrey's payments for the period from 1990 to 1996. Instead, it found that by Patricia's "own admission as reflected in her written submissions, [Jeffrey] made at least 19 monthly payments between September 1994 and November 1996 alone." Based on Patricia's lack of credibility and the evidence regarding Jeffrey's payments, the trial court made a reasonable inference that just as Jeffrey had paid 90 percent of the child support between 1998 and 2003, he likely paid 90 percent of the support between 1990 and 1996. Jeffrey was not under a wage garnishment order during either period. Under the applicable law, we do not second-guess the court's credibility determinations. Moreover, even if we would have

drawn a different inference from the available evidence, we do not substitute our inference for a trial court's reasonable inference.

II.

The trial court's statement of decision noted, "The fact that laches is unavailable as a complete defense does not mean that the court cannot consider the difficulties that the passage of time can create for the party on whom the burden is imposed." Based on that comment, Patricia contends the trial court relied on the defense of laches in violation of *In re Marriage of Fellows* (2006) 39 Cal.4th 179, which held that Family Code section 4502(c) bars the laches defense in a private action to enforce a child support order, and the statute should be applied retroactively to its January 1, 2003 effective date. (*Fellows, supra,* at p. 190.)

Here, the trial court was aware of the *Fellows* holding, and did not limit Patricia's recovery based on laches. Rather, read in context, the court simply remarked about the practical difficulties Jeffrey faced in producing documentary evidence of his child support payments to satisfy his burden of proof, given that he had to retrieve documents spanning approximately 15 years. We find no error.

III.

Jeffrey contends in his cross appeal that under section 1008, the trial court erred in refusing his motion for reconsideration. Jeffrey had contended in the motion that he "was denied his day in court, and not able to produce additional evidence to support his case that he did not owe any more child support arrears" because a regional fire had threatened

his home and the authorities prohibited him from returning home to timely get the judgment that was mailed to his home.

Section 1008 is jurisdictional. It states: "(a) When an application for an order has been made to a judge, or to a court, and refused in whole or in part . . . any party affected by the order may, within 10 days after service upon the party of written notice of entry of the order and based upon new or different facts, circumstances, or law, make an application to the same judge or court that made the order, to reconsider the matter and modify, amend, or revoke the prior order. " Under this statute, "a party seeking reconsideration of a prior ruling upon an alleged different set of facts must 'provide both newly discovered evidence and an explanation for the failure to have produced such evidence earlier.' " (*In re Marriage of Drake* (1997) 53 Cal.App.4th 1139, 1169.)

We review the court's ruling on a motion for reconsideration under the abuse of discretion standard. (*The New York Times Co. v. Superior Ct.* (2005) 135 Cal.App.4th 206, 212; *Glade v. Glade* (1995) 38 Cal.App.4th 1441, 1457.) Thus, whether Jeffrey proffered new or different facts sufficient to satisfy the jurisdictional requirements of section 1008, subdivision (b), is a "question confided to the sound discretion of the trial court, with the exercise of which [the appellate court] will not interfere absent an obvious showing of abuse." (*Graham v. Hansen* (1982) 128 Cal.App.3d 965, 971.)

Here, the trial court denied the motion for reconsideration because under section 1008, it was untimely and, alternatively, Jeffrey did not present any new or different facts

or circumstances or law.[3] Jeffrey concedes the motion was untimely, but contends that "the court would not look at the circumstances surrounding the untimelyness [*sic*] of the motion. There were circumstances beyond [his] control that prevented the Motion to be filed within the Statute [*sic*]."[4] Even if his motion was timely filed, Jeffrey did not present evidence that would excuse his failure to present his evidence earlier. He conceded during oral arguments that several months before the deadline established in section 1008, he had given his attorney the information he sought to present in the motion for reconsideration. Accordingly, the trial court did not err in denying the motion.

---

[3] On our own motion, we take judicial notice of the fact that on October 23, 2007, the Chief Justice of California, Chair of the Judicial Council, issued a special order declaring that October 24-27, 2007, should be deemed holidays for purposes of computing the time for filing papers with the court.

[4] We deny Jeffrey's motion to augment the record on appeal because the documents he submits are not material to our resolution of this appeal.

## DISPOSITION

The judgment is affirmed. Each party is to bear its own costs on appeal.

O'ROURKE, J.

WE CONCUR:

McCONNELL, P. J.

IRION, J.